

EXHIBIT 22

**REDACTED VERSION OF
DOCUMENT SOUGHT TO BE
SEALED**

HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 178</p> <p>1 of disgorgement that remain in your report?</p> <p>2 A. I think it's just the either/or. It's</p> <p>3 either the nothing or everything.</p> <p>4 An economist has his head -- it's a hard</p> <p>5 time to get head around how you think about valuing</p> <p>6 things without thinking about what alternatives are</p> <p>7 available.</p> <p>8 And I -- I don't mean this to be nasty in</p> <p>9 any sense, but I just think Mr. Malackowski is</p> <p>10 wrong about this matter, that is embedded in his</p> <p>11 analysis is a but-for. And the but-for in his is,</p> <p>12 Android would not exist. But that's still a</p> <p>13 but-for analysis. I mean, if you are going to</p> <p>14 give -- if you are going to allocate all of the</p> <p>15 profits, disgorge all of the profits, you're really</p> <p>16 saying that it wouldn't be here except for these</p> <p>17 37 APIs. That in -- the way I'm using but-for,</p> <p>18 that's a but-for analysis.</p> <p>19 Q. Now, going back to that constructive</p> <p>20 license royalty from the last time, it was about</p> <p>21 20 percent on gross ad revenues, was what you</p> <p>22 concluded that royalty would be, in addition to the</p> <p>23 \$100 million; is that right?</p> <p>24 A. I would have to go back and look at the</p> <p>25 report for the details, so -- but I don't remember.</p>	<p style="text-align: right;">Page 180</p> <p>1 well, if you are asking me to confirm the math, the</p> <p>2 answer is yes. I -- I don't think it's directly</p> <p>3 applicable, however, that it's the -- the</p> <p>4 hypothetical negotiation is a different construct</p> <p>5 than -- than the disgorgement.</p> <p>6 So as I said earlier to Mr. Ragland,</p> <p>7 in -- I don't think you can lift a parameter out of</p> <p>8 one and apply it to the other.</p> <p>9 Q. (By Ms. Hurst) All right. So let's</p> <p>10 explore that for a second.</p> <p>11 Professional Kearn, do you think, though,</p> <p>12 to the extent that both of those constructs are</p> <p>13 designed to try to measure value, they should still</p> <p>14 come out in roughly the same ballpark?</p> <p>15 A. No. Because they are -- they are trying</p> <p>16 to measure something different. As -- as I</p> <p>17 understand it, disgorgement is that you take away</p> <p>18 from the infringer all of the gain they got from</p> <p>19 using the product.</p> <p>20 The hypothetical negotiation is, you ask,</p> <p>21 what's the expected incremental contribution of the</p> <p>22 technology to the profits of the infringer. And</p> <p>23 then as I said earlier, then how would the parties</p> <p>24 agree to split that in some way, and then how would</p> <p>25 they then monetize that in terms of a royalty or a</p>
<p style="text-align: right;">Page 179</p> <p>1 I mean, it's in that range, yes.</p> <p>2 Q. Do you recall that there was an element</p> <p>3 of it that was 20 percent of the gross margin ad</p> <p>4 revenues?</p> <p>5 A. Yes.</p> <p>6 Q. And if you accept -- well, the parties</p> <p>7 roughly agree on what the gross ad revenues are</p> <p>8 here, right?</p> <p>9 A. I think it's not just roughly, they</p> <p>10 agree.</p> <p>11 Q. They have agreed.</p> <p>12 A. Yes.</p> <p>13 Q. And that number --</p> <p>14 A. Well, I don't know that the parties</p> <p>15 agree. The experts have essentially the same</p> <p>16 ad revenues.</p> <p>17 Q. And that's [REDACTED]</p> <p>18 A. Yeah, it's almost [REDACTED] and then</p> <p>19 sort of comes down from there.</p> <p>20 Q. All right. So if we go with the [REDACTED] as</p> <p>21 the total pool of revenue, just applying your</p> <p>22 20 percent to that, that would be [REDACTED],</p> <p>23 right?</p> <p>24 MR. RAGLAND: Objection. Form.</p> <p>25 THE DEPONENT: Yeah, but I -- that --</p>	<p style="text-align: right;">Page 181</p> <p>1 royalty rate.</p> <p>2 And the disgorgement is ex post, that is</p> <p>3 it looks at, you know, how much Google made from</p> <p>4 this. The constructive license hypothetical</p> <p>5 negotiation says, at the time before infringement</p> <p>6 occurs, when they were looking forward, how</p> <p>7 profitable do they think it would be. And there's</p> <p>8 no reason why the ex-post profit should be equal to</p> <p>9 the ex-ante expected profits.</p> <p>10 Q. Unless their forecasts were good.</p> <p>11 A. Yes, unless they forecast -- unless they</p> <p>12 were clairvoyant and saw exactly what the future</p> <p>13 was.</p> <p>14 Q. And do you recall that your table 2 in</p> <p>15 your first report had a forecast of about</p> <p>16 [REDACTED] as -- at the same point in time that</p> <p>17 we're now looking at [REDACTED]</p> <p>18 MR. RAGLAND: Objection. Form.</p> <p>19 THE DEPONENT: Yeah, let's be careful</p> <p>20 about whose forecast this was.</p> <p>21 Q. (By Ms. Hurst) Right. My apologies.</p> <p>22 It -- it recited a Google forecast.</p> <p>23 A. Yes. There was the -- the -- in my first</p> <p>24 report, I faced the same problem I face in this</p> <p>25 report, which is you had widely differing</p>

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Exhibit 22 to Mullen Declaration - Deposition Testimony of James Kearn